



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 30, 1994

Janice M. Caldwell, Dr., P.H.  
Executive Director  
Texas Department of Protective  
and Regulatory Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR94-866

Dear Dr. Caldwell:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 26569.

The Texas Department of Protective and Regulatory Services (the "DPRS") received a request for records on a particular child abuse investigation. The requestor is the parent of the child, who subsequently brought a lawsuit in federal court against employees of the DPRS for damages based on certain actions allegedly taken during that investigation. You contend that the requested records are excepted from disclosure under section 552.103 of the Government Code.

We note initially that section 34.08 of the Family Code makes confidential certain information about DPRS child abuse investigations. Section 34.08(a) provides:

Except as provided in Subsections (b) and (c) of this section, the reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the purposes of this code under regulations adopted by the investigating agency.

Subsections (b) and (c) relate to the disclosure of records concerning an investigation of an adopted child to the adoptive parents, prospective adoptive parents, or to the child upon reaching adulthood. None of these circumstance are applicable to the request at issue. The requestor has no right of access to these records under the provisions of section 34.08. See Open Records Decision No. 587 (1991).

However, by rule DPRS has provided that a "client" of DPRS may review certain investigation records:

A child protective services client may review all information in the client's case record except the identity of the complainant, *information exempted from disclosure under the Open Records Act*, and information exempted under other state laws.

40 T.A.C. § 700.103 (emphasis added). It appears that the requestor is a "client" of DPRS and would be entitled by rule to review certain information, unless such information is withheld pursuant to the Texas Open Records Act or other state law.

Section 552.103(a) of Chapter 552 excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

For information to be excepted from disclosure, the governmental body must demonstrate that the information "relates" to the pending litigation. Open Records Decision No. 551 (1990).

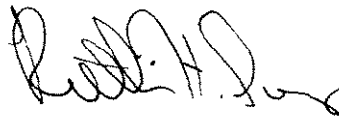
Section 552.103(a) was designed to prevent the use of Chapter 552 as a method of avoiding the rules of discovery in litigation. Attorney General Opinion JM-1048 (1989) at 4. It allows a governmental body to protect its position in litigation by requiring that information be disclosed, if at all, through discovery. Open Records Decision No. 551. Once the litigation ends, section 552.103(a) is no longer applicable. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Section 552.103(a) is a discretionary exception that may be waived by the governmental entity. Open Records Decision No. 542 (1990) at 4. It is also not applicable to information that has already been seen by the opposing party to the litigation. Open Records Decision No. 349 (1982) at 2.

DPRS has provided court documents showing that litigation is pending. A review of the information at issue, which was submitted to this office, shows that it is related to that litigation. Because DPRS has shown the applicability of section 552.103(a) and 40 T.A.C. § 700.103 provides that "clients" of DPRS may not review information that can

be withheld under the Open Records, DPRS may refuse to allow review of the case file by the requestor. It is, of course, within DPRS' discretion to allow the requestor to review the file. Disclosure of the information at issue is otherwise generally prohibited under section 34.08 of the Family Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/LRD/rho

Ref.: ID# 26569

Enclosures: Submitted documents

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